

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA, CR 21-50020

Plaintiff, FACTUAL BASIS STATEMENT

vs.

JAMES MCKINSTRY,

Defendant.

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The undersigned defendant stipulates that the following facts are true and the parties agree they establish a factual basis for the plea in the action pursuant to Federal Rules of Criminal Procedure 11(b)(3):

On May 26, 2020, NCMEC received three Cybertips related to the same IP address from Sendvid.com. ICAC Investigator Jesse Fagerland obtained the images related to the Cybertips and obtained a state search warrant to verify their contents. He observed the same 21 minute, 46 second video of a girl approximately 10-12 years old in various states of dress and ultimately bending over exposing her nude genitals and bouncing her buttocks.

Agents linked the IP address associated with the Cybertips to James McKinstry, Rapid City, South Dakota. On July 29, 2020, ICAC agents went to McKinstry's address to speak to him regarding the child pornography. He was at the house, in his garage doing woodwork and agreed to speak to Investigator Fagerland. He admitted to using Midcontinent as an internet provider and

ultimately admitted it was he who received the images of child pornography. He admitted to looking for those images several times a week for "forever . . . forever," though he was cagey about the process he used to get to the images. He estimated the youngest victim was three years old. McKinstry admitted to using FoxFire to search for child pornography and that some of the images would still be on one device. He stated that he "probably should have got rid of it, huh?" Later he said that looking at child pornography was "theoretically" wrong.

Forensic Examiner Hollie Strand with the ICAC team analyzed multiple devices searched pursuant to the McKinstry residence search warrant. The ECU report details hundreds of images and videos constituting child pornography located on 4 devices. Images include penetration and infants. All images were received via the internet and possessed on devices manufactured outside of the district of South Dakota.

DENNIS R. HOLMES  
Acting United States Attorney

*Sarah B. Collins*

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05/27/22

Date

*5-26-2022*

Date

*5/24/22*

Date